IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 501 of 1985

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALPESH HARISHCHANDRA SHAH

Versus

ARIEZ PIROJSHA KHAMBHATA & ANOTHER

Appearance:

1. Civil Revision Application No. 501 of 1985

MR SURESH M SHAH for Petitioners Nos. 1,2

MR AS VAKIL for Respondents Nos. 1-2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 04/05/2005

ORAL JUDGEMENT

Feeling aggrieved by the judgment and order dated

8th January, 1985 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No.98/1980 the appellant, defendant in H.R.P. Suit No.1165/1973, has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act").

The respondents are the landlords of a large property popularly known as Imperial Soda Factory Compound bearing Survey No.607, Municipal Census Nos.384, 385 and 386 situated at Asarwa, Ahmedabad. A part of the said property bearing Municipal Census Nos.385, 385/1, 385/1/1, 385/2 and 385/3 comprising five rooms admeasuring 948 sq.yards was leased to the petitioner under rent note Exh.48 for a monthly rent of Rs.300=00 exclusive of municipal taxes and education cess.

The plaintiff instituted the above referred H.R.P. Suit No.1165/1973 in the Court of Small Causes at Ahmedabad for recovery of possession of the suit premises and the amount of arrears of rent due on the grounds that the defendant was the tenant in default and that he was not ready and willing to pay the rent. The said suit came to be decreed by an ex-parte judgment dated 2nd August, 1974. The said ex-parte judgment came to be set-aside by order dated 4th May, 1978 made on Civil Misc. Application No.3042/1974. Since the restoration of the suit the plaintiffs amended the plaint and sought recovery of possession of the suit premises also on the grounds that the defendant had made structural changes in the suit premises and had thereby caused damage and wastage to the suit premises; that he had raised permanent structure in the suit premises without the consent of the plaintiffs; that he had committed breach of the terms of the agreement in as much as he had encroached upon the land adjacent to the suit premises and that he had unlawfully sublet part of the suit premises to one Kalubhai Ogadhbhai; that in contravention of the terms of the lease the said Kalubhai had been doing welding works in part of the suit premises and the shed constructed on the encroached land; that the defendant had neglected to pay municipal taxes and education cess on account of which the suit premises was taken over by the Municipal Corporation for a nominal price of Re.1=00. The plaintiff had to pay a sum of Rs.12,000=00 to the Municipal Corporation to recover the suit premises.

The suit was contested by the defendant by written statement Exh.20. He denied the allegations made

against him and he also raised dispute as to the standard rent of the suit premises. According to the defendant the suit premises was initially leased to one Ravjibhai Veljibhai Bharadiya under the consolidated rent note dated 1st November, 1961 (Exh.71) and that the business of the said Ravjibhai was purchased by the defendant along with tenancy right in the suit premises. The defendant had filed Misc. Rent Application No.2290/1968 in the Court of Small Causes, Ahmedabad for determination of the standard rent of the suit premises. The said application was compromised on 23rd September, 1968. According to the said compromise, by rent note dated 23rd September, 1968 (Exh.48), the plaintiffs agreed to accept the defendant as tenant in the suit premises with effect from 1st July, 1968 for a monthly rent of Rs.300=00. He challenged the legality of the suit notice and raised the dispute as to the standard rent of the suit premises. The learned trial Judge framed issues at Exh.32. The learned trial Judge was, by judgment and order dated 4th December, 1979, pleased to pass decree for possession and for arrears of rent. The learned trial Judge was pleased to hold that the defendant was in arrears of rent as alleged; that the defendant did deposit the amount of arrears of rent on the first day of hearing of the suit but failed to pay the rent regularly as envisaged by Section 12(3)(b) of the Rent Act. The defendant had thus forfeited the protection against eviction granted by Section 12(3)(b) of the Rent Act. The defendant had made structural alterations and had thus caused damage and wastage to the suit premises. The defendant had, in contravention of the terms of the lease, encroached upon the land belonging to the plaintiffs and had started the welding works. He had sublet part of the suit premises to the aforesaid Kalubhai Ogadhbhai; that he had failed to pay the municipal taxes and education cess as agreed.

Feeling aggrieved, the defendant preferred the above referred Civil Appeal No.98/1980 before the Appellate Bench, Small Causes Court, Ahmedabad. The Appellate Bench, by impugned judgment and order dated 8th January, 1985, reversed the finding recorded by the learned trial Judge with respect to the structural alterations made by the defendant and the subletting. The Appellate Bench, however, confirmed the finding that the suit notice was legal and valid and that the defendant had forfeited the protection against eviction conferred by Section 12(3)(b) of the Rent Act. The Appellate Bench thus confirmed the decree for possession passed on the ground of arrears of rent alone. Feeling aggrieved, the defendant has preferred the present Revision Application.

Pending this Revision Application the defendant has passed away. His heirs and legal representatives have been substituted.

It is indisputable that the defendant was in arrears of rent since 1st September, 1971 as alleged in the plaint. However, the defendant did pay the amount of arrears of rent in the Darkhast proceedings filed pursuant to the ex-parte decree dated 2nd August, 1974. As recorded by the learned trial Judge and confirmed by the Appellate Bench, before the first day of hearing of the suit the defendant had deposited the amount of arrears of rent. However, he failed to pay the rent regularly every month thereafter. Section 12(3)(b) of the Rent Act envisages that a tenant, to avail of the protection conferred by Section 12(3)(b) of the Rent Act, shall, on the first day of hearing of the suit pay or tender in Court the standard rent and permitted increases; shall thereafter continue to pay or tender in Court such rent and permitted increases regularly till the suit is finally decided; and shall pay cost of the suit.

As recorded hereinabove the defendant did pay the amount of arrears of rent and permitted increases (the municipal taxes and the education cess) payable by the defendant on the first day of hearing of the suit. He, however, did not continue to pay the amount of standard rent and permitted increases regularly every month. The defendant thus forfeited right to protection under Section 12(3)(b) of the Rent Act. Both the Courts below, therefore, were right in passing decree for possession against the defendant on the ground of non-payment of rent.

No case for interference is made out. The Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

/sakkaf